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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

Estate of JOHN P. CALLAHAN, Deceased.	B251025
ANGELA M. CALLAHAN, et al., Petitioners and Appellants, v. MICHAEL THOMAS CALLAHAN, et al., Objectors and Appellants.	(Los Angeles County Super. Ct. No. BP108910)

APPEAL from a judgment of the Superior Court of Los Angeles County, Marvin Lager, Judge. Affirmed.

Roquemore, Pringle & Moore, John P. Pringle and Maria Ajhar Thompson for Petitioners and Appellants.

Law Offices of David Patrick Callahan and David Patrick Callahan for Objectors and Appellants.

Angela Callahan petitioned to probate the 2007 will of her husband John Callahan. John's[1] four children filed a will contest and argued that both the 2007 will and the will he had executed in 2006 were the product of undue influence. After a lengthy trial, the probate court concluded that John's 2007 will was the product of undue influence and denied probate of that will. The court found that John's 2006 will was not unduly influenced and admitted it to probate. All parties appeal. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

John and Pauline Callahan were married for many years and had four children: Michael, David, Christine, and Catherine. John made a will in 1970 leaving all his property to Pauline, and providing that if Pauline predeceased him his estate should be divided equally among his four children. Pauline died in September 1999.

John and Angela met in early February 2000 when she became John's caregiver. They were married on September 26, 2000. John did not inform his children of the marriage until 2003.

In 2003, John executed a codicil to his 1970 will in which he stated that he had separately provided for Angela to be a beneficiary of his civil service annuity. John confirmed the terms of his previous will, except that he gave Angela the right to remain in his home for a period of five years, plus one-half the term of their marriage.

On December 9, 2006, John executed a holographic will providing that upon his death, Angela would receive a life interest in his home where they lived. When Angela died, the house was to be conveyed to John's four children, with an interest also given to Ethel Meneses, Angela's daughter from her first marriage.

On December 15, 2007, John signed a holographic will giving both Angela and Ethel a life estate in his home, with the property passing after their deaths to John's children. John suffered a heart attack on December 17, 2007, and died on December 27, 2007.

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[1] We use first names in this matter involving family members for clarity and to avoid confusion.

In February 2008 Angela filed a petition for probate of the 2007 will and for letters of administration with will annexed, as well as a petition to administer John's estate. She attached a copy of the 2007 will to the petition for probate. John's children objected to the admission to probate of the will, to Angela's request to be appointed personal representative to administer John's estate, and to her request for authority to administer the estate under the Independent Administration of Estates Act. They also filed a will contest.

The court conducted a lengthy trial from March 2011 to November 2012 in which issues relating to the 2006 and 2007 wills were litigated extensively. John's children argued that Angela and Ethel had perniciously influenced John from shortly after they met him until the time of his death. In their opening statement, the children observed that Angela had come into John's life as a caregiver but suddenly and secretly became his wife. The children alleged that Angela used John for immigration purposes, and that she began "scamming" and transferring John's money to her relatives outside the United States. They claimed that Angela isolated an aging John and prompted him to support her family. Then, the children contended, "that's when you have a will that is written in, I think it's the ninth of December 2006, with my then 88-year-old dad, after he's had some health problems, giving a life estate to Angela, and that's what the scam was all about, that was the getting everything that was going to go on." In 2007, the children argued, John began to have health problems that Angela concealed from them, and she misled John into believing she was more qualified in health care than she was. The children maintained that John was vulnerable, isolated, and unduly influenced, and that "there was supposedly a will drawn" on December 15, 2007, shortly after which John died.

In contrast, Angela and Ethel maintained that Angela and John's marriage was a normal and happy marriage; that the 2007 will was a properly executed holographic will; and that John was competent and of sound mind when he executed the 2007 will. They maintained that John's children, specifically David, exerted undue influence on John by pressuring him in 2003 to limit Angela's right to stay in the house to a short term. John,

they argued, later rethought this decision, and told Angela in the emergency room before he died that he had prepared documents "to protect you from David." The children, moreover, had repeatedly attempted to pressure John into establishing a trust. As far as funds being sent to Angela's family elsewhere in the world, Angela and Ethel maintained that this was part of their culture and pointed out that Angela had been sending money to her family since before the marriage.

After the extensive presentation of evidence, in closing argument John's children again articulated their theory that Angela and Ethel had targeted John "as soon as they recognized how vulnerable he was. Rich, old man, in his 80's, ready to die." The children argued that John was "already had" and had "done [Angela and Ethel's] bidding" since the spring of 2000, when he began to directly employ Angela rather than securing her services from the agency that had placed Angela with him. The children contended that the Callahan marriage was a sham and that John was "victimized by [Angela and Ethel's] constant influence" into marrying Angela, giving her money, and providing care and housing for Ethel.

The children challenged the wills John wrote in 2006 and 2007. They argued that Angela and Ethel "got my dad in 2006 to give a holographic will giving her a life estate," and that the 2006 will was "suspicious because it uses language about a burial mass," which would not be the terminology used by a Catholic person such as John. The will was "supposedly" signed, they argued, and then was kept in Angela's safe deposit box and not in John's papers. The children questioned the 2006 will because it provided for no executor, was not witnessed, and was limited to disposing of the house and not other assets—telling omissions, they claimed, because John was an attorney with experience in this area of law. The children argued that the 2007 and 2006 wills contained unnatural provisions allowing Angela and Ethel to profit unduly.

The probate court issued a statement of decision noting that "This case was tried on the theory that the December 15, 2007 and December 9, 2006 holographic wills were the product of undue influence and other wrongdoing." The court concluded that "Angela and Ethel had great influence with Decedent" but that the court did "not find

undue influence, fraud or similar wrongful conduct by Angela or Ethel in connection with the December 9, 2006 will." In explanation, the court wrote, "I have considered—among other factors: The life estate to Angela is consistent with Decedent's stated intention in August, 2003. The bequest is a natural one to a second middle-aged wife who otherwise would be without a house. The gift does not result in an undue profit. All four natural children had marketable skills and were 'set for life' despite their share of the family home being deferred; Angela was not in such a good position. There is no evidence—direct or circumstantial—that Angela sought to procure the disposition. Decedent was in relatively good physical and mental health. He was not isolated. He was in frequent contact with his children who gave him medical, legal and personal advice. [Fn. omitted.] "

The court found, however, that the 2007 will was the product of undue influence. The court explained, "As a practical matter the will defers any benefit to the families of the four natural children by decades. This upsets Decedent's written estate plan in existence since 1970 that his children (or their children) would receive their bequest upon his and his wife's death. Favoring a step-daughter over natural children and grandchildren is not natural. Under the circumstances Ethel gains an undue profit. By December 15, 2007, Decedent's physical and mental condition had substantially deteriorated. He was dependent on Angela and Ethel. [¶] Angela testified that she and Ethel first learned of the December 15, 2007, will when told of it by Decedent in the hospital. I do not credit this testimony. They further testified to a heated conversation between Decedent and his son David just before the December 15th will was written, in an apparent attempt to explain it. I also do not credit this testimony. [¶] In addition to the foregoing, I find that there is no explanation for the December 15, 2007, will other than undue influence by Angela and Ethel."

The court denied probate of the 2007 will and admitted the 2006 will to probate. Angela was appointed administrator with will annexed. All parties appeal.

DISCUSSION

I. Cross-Appeal: Denial of Probate of 2007 Will

We begin by addressing the cross-appeal because if we were to find meritorious Angela and Ethel's argument that the 2007 will should have been admitted to probate, that determination would moot issues alleged by John's children concerning the admission of the 2006 will. On the cross-appeal, Angela and Ethel argue that the probate court applied an incorrect burden of proof and that insufficient evidence supports the court's finding that the 2007 will was the product of undue influence.

A. Burden of Proof

"Undue influence is pressure brought to bear directly on the testamentary act, sufficient to overcome the testator's free will, amounting in effect to coercion destroying the testator's free agency." (*Rice v. Clark* (2002) 28 Cal.4th 89, 96.) "Although a person challenging the testamentary instrument ordinarily bears the burden of proving undue influence ([Prob. Code,]§ 8252), the [California Supreme Court] and the Courts of Appeal have held that a presumption of undue influence, shifting the burden of proof, arises upon the challenger's showing that (1) the person alleged to have exerted undue influence had a confidential relationship with the testator; (2) the person actively participated in procuring the instrument's preparation or execution; and (3) the person would benefit unduly by the testamentary instrument." (*Id*. at pp. 96-97.)

Angela and Ethel argue that the probate court "erred in it[]s application of the burden of proof," placing the burden on them "to prove the Decedent's reason for the change to his will" when in fact no presumption of undue influence with respect to the 2007 will arose under the facts of the case. They acknowledge, however, that in its statement of decision the probate court wrote, "Whether or not the presumption applies does not change the result herein." Contrary to Angela and Ethel's assertion that the court misapplied the burden of proof and required them to prove that the will was not the product of undue influence, the probate court expressly declared that regardless of whether a presumption of undue influence applied its findings would be the same. In

light of this statement, Angela and Ethel have not established, and cannot establish, that the probate court erroneously placed the burden of proof upon them with respect to the presumption of undue influence. (*State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610 (*Pietak*) [appellant has the burden of affirmatively demonstrating error, and only prejudicial error will support reversal of a judgment].)

B. Sufficiency of the Evidence of Undue Influence on 2007 Will

Angela and Ethel contest the sufficiency of the evidence to support the probate court's finding of undue influence in conjunction with John's 2007 will. "A challenge in an appellate court to the sufficiency of the evidence is reviewed under the substantial evidence rule." (*Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968.) "We look at the evidence in support of the successful party, disregarding any contrary showing, and we resolve all conflicts in favor of the respondent, indulging in all legitimate and reasonable inferences to uphold the verdict if possible." (*Canister v. Emergency Ambulance Service* (2008) 160 Cal.App.4th 388, 394 (*Canister*).)

Undue evidence may be proven by circumstantial evidence. (*David v. Hermann* (2005) 129 Cal.App.4th 672, 684 (*David*).) "'The proof of undue influence by circumstantial evidence usually requires a showing of a number of factors which, in combination, justify the inference, but which taken individually and alone are not sufficient.' [Citation.]" (*Ibid.*) The probate court's finding that the 2007 will was the product of undue influence was predicated on its factual determinations, based on the evidence presented at trial, that the 2007 award of a life estate to Ethel on top of the life estate previously given to Angela deferred any benefit to John's four children by decades, contravening John's previously-expressed testimonial intent that his children would receive bequests after John and his wife had died; that the life estate to Ethel in the 2007 will, favoring her over John's natural children and grandchildren, was not natural; that Ethel enjoyed an undue profit under the terms of the 2007 will; that by December 15, 2007, John's physical and mental condition had substantially deteriorated, and he was

dependent on Angela and Ethel; and that there was no explanation for the 2007 will except for undue influence.

Angela and Ethel challenge the court's finding. First, they assert that there was no evidence of "any specific acts of pressure by the Respondents brought to bear on the making of the will." Angela and Ethel argue that the evidence was "undisputed" that neither of them procured the 2007 will because neither was present when it was prepared. While "evidence that 'the chief beneficiaries under the will were active in procuring the instrument to be executed'" is one of the indicia of undue influence (*David*, *supra*, 129 Cal.App.4th at p. 684), a finding of undue influence does not require the beneficiary's presence at the execution of the will. (*Estate of Baker* (1982) 131 Cal.App.3d 471, 483.) Evidence of undue influence "is not limited to the actual time the will is executed; instead, facts bearing upon such undue influence, both before and after execution of the will are admissible so long as they tend to show such influence at the time the will was executed." (*Estate of Larendon* (1963) 216 Cal.App.2d 14, 19.) Moreover, Angela and Ethel "cannot challenge the court's finding of undue influence by showing only the weakness or absence of evidence of procurement; other factors in combination can also support this finding. To challenge the finding, [they] must show that the evidence as a whole does not satisfy the general standard for proof of undue influence." (*David*, at pp. 684-685.)

Angela and Ethel next address John's testamentary competence and the reason for the change in his will. They claim that the evidence shows that John did not have a susceptible personality; that his impairments as of 2007 were minor and typical of old age; and that he was competent and of sound mind as of December 2007. John's 2007 will, they argue, evidenced sophistication, conscious thought, and a change in estate plan that was consistent with having argued with one of his sons. Angela and Ethel, however, have not demonstrated any insufficiency of the evidence to support the trial court's findings of John's condition and circumstances in 2007. Indeed, they acknowledge the evidence "of a *slight slowdown* by the Decedent in late 2007" (emphasis original); that John stopped driving in 2007; that John became confused on the phone with David on

December 12, 2007; and that John's daughter Christine, a nurse, reported that John sometimes had to search for the right word and confused the names of his grandchildren. Instead, Angela and Ethel minimize the evidence that supports the court's findings and urge a different weighing of the evidence. For instance, they characterize John's decline as "slight" and his impairments as "minor," emphasize that the confusion noted by David resolved quickly, and highlight the evidence presented to the court of John's clarity and orientation at various times leading up to his heart attack. They argue that John's original estate plan "provides little guidance to his testamentary wishes." They set forth their expert witness's testimony that the bequest of a life estate in the house to Ethel was not a dramatic change and argue that in fact there were reasonable explanations for the change in the will.

Essentially, Angela and Ethel present evidence that would have permitted the court to make findings in their favor, and they argue that testimony that the probate court did not credit was consistent with, or was not contradicted by, other evidence. "It is not our function as a reviewing court to reweigh the evidence, resolve conflicting evidence and inferences, or to judge the credibility of the witnesses." (*Grimshaw v. Ford Motor Co.* (1981) 119 Cal.App.3d 757, 806.) Demonstrating that the evidence presented would have permitted the court to make contrary findings does not establish that there was insufficient evidence to support the court's findings. "When two or more inferences can reasonably be deduced from the facts, we do not substitute our deductions for those of the finder of fact. [Citation.] We must affirm if substantial evidence supports the trier of fact's determination, even if other substantial evidence would have supported a different result." (*Canister*, *supra*, 160 Cal.App.4th at p. 394.) Angela and Ethel have not established that there was insufficient evidence to support the probate court's finding of undue influence with respect to the 2007 will. (*David*, *supra*, 129 Cal.App.4th at pp. 684-685.)

II. Appeal: Admission of 2006 Will to Probate

A. Jurisdiction to Admit the 2006 Will to Probate

John's children argue that because the petition that commenced the probate proceedings mentioned and attached only the 2007 will, the judgment admitting the 2006 will to probate was void and violated both the California Rules of Court and their constitutional rights to due process and notice. We requested supplemental briefing on questions of jurisdiction, compliance with the California Rules of Court, and appropriate remedies for any deficiency.

Angela's filing and service of the petition for probate seeking admission to probate of the 2007 will was sufficient to confer subject matter jurisdiction on the probate court over the administration of John's estate and to permit the court to proceed to hear the petition to probate the 2007 will. John's children do not deny that the initial petition for probate contained all the information required by Probate Code section 8002 to commence a probate proceeding, that notice was served on the interested persons, and that the petition was published prior to the first hearing in the probate court. The court was therefore empowered to proceed and to find the jurisdictional facts under Probate Code section 8005. Although the probate proceedings commenced properly, when the 2006 will came under consideration no party complied with California Rule of Court, rule 7.54, which provides that any instrument offered for probate other than the instrument that was filed with and referred to in the original petition "must be presented in an amended petition, and a new notice must be published and served."

John's children contend that because the 2006 will was never presented in an amended petition, with a new notice published and served, the probate court lacked jurisdiction to admit it to probate. They rely on *Estate of Jenanyan* (1982) 31 Cal.3d 703 and *In re Poder's Estate* (1969) 274 Cal.App.2d 786, both of which stand for the principle that courts in probate proceedings act in excess of their jurisdiction if they decide issues beyond the scope of the notice, but that this defect may be waived. (*Jenanyan*, at p. 708 ["The trial court is without jurisdiction to make an order which has

not been properly noticed, unless the right to notice has been waived"]; *Poder*, at p. 791 ["Even where improper notice . . . would otherwise deprive a court of jurisdiction to make an order or pronounce judgment, the order or judgment will not be declared void if the complaining party has waived the defect"].)

Although the petition for probate here concerned and attached only the 2007 will and did not give notice that the 2006 will would be considered by the probate court, it is apparent from the record that John's children were aware that the court was considering the question of undue influence with respect to both wills and raised no objection. All the Callahan children appeared in the probate proceedings, and they were represented by John's son David, an attorney. John's children have not identified any instance in the record where they objected to the consideration of the 2006 will or asserted that the court was exceeding its jurisdiction by doing so.

To the contrary, John's children encouraged the consideration of the 2006 will. Prior to trial, they submitted a proposed joint trial statement to the court that listed among the contested issues the authenticity and validity of the 2006 will, John's testamentary capacity in December 2006; and the presence or absence of undue influence, fraud, and duress on John with respect to the 2006 will, as well as the authenticity and validity of John's other wills and codicils. While the parties never reached agreement on a joint trial statement, their preparation of a document identifying as a contested issue the authenticity and validity of all of John's known wills and codicils shows that John's children understood the proceeding to be a determination of which will would be admitted to probate, not merely whether the 2007 will would be admitted to probate.

Similarly, at trial John's children litigated the validity of both the 2006 and 2007 wills, proceeding on the theory that both were the products of undue influence. They argued John had been the victim of Angela and Ethel's isolation, control, and pressure since 2000, and that "when you look at the 2007 will, you look at the 2006 will, all of my dad's decisions were based on lies." They claimed that Angela and Ethel "got my dad in 2006 to give a holographic will giving [Angela] a life estate." The 2006 will, "supposedly" signed and then ferreted away by Angela, was "suspicious" in its

terminology and questionable in its provisions: "[I]t doesn't have an executor, doesn't have any witnesses, doesn't take care of anything other than the house, the real estate, nothing in the house, nothing about any other property that he might have or own. So that may be okay for somebody who is not an attorney who does wills and estates, but doesn't it tell you that there is an issue about why after whatever pressure of that moment John Callahan didn't type it up?"

The children argued that both the 2007 and 2006 wills contained unnatural provisions allowing undue profit. With respect to the 2006 will the children asked, "is there an explanation why what [*sic*] would have been appropriate for . . . Angela to stay there until she was 65 or 66, and she is basically four years younger than [John's daughter] Christine? Why should she get the benefit of that for the rest of her life and other children not get any benefit when she is getting $75,000 from the [individual retirement account]? She is getting his bank account. She is getting $36,000 a year which will go up in [cost of living adjustments] for the rest of her life. Why that amount again? That is an undue amount to get."

The children argued that Angela had been provided for by the 2003 codicil to John's 1970 will, and that the court should ask, "What changed from 2003 to 2006?" Angela's financial position had improved between 2003 and 2006 because she had now "pocketed" more of John's money, so "[w]hat disadvantaged [Angela] after that? What made it so important that suddenly he should disinherit his kids from the only other asset in the place, which is the house? And our point is it is undue influence based on the lies that they were giving to Dad about their poor situation . . . ." John's children argued that "the only thing that changed was that these people could see him going downhill, and that is when it changed . . . ." They saw a clear progression in the 2006 and 2007 wills: "They nailed him in 2006, and then they can see him really going downhill. This is the time they go for the gold. And this the time they added Ethel, and Ethel ends up being a star free trust baby for the rest of her life. She gets a home for free for the rest of her life. And the children and the grandchildren don't get anything. That is not like Dad."

In conclusion, John's children argued, "I think that at least what we have done here certainly as to the 2007 [will] and I think as to the 2006 will is to shift the burden of proof of lack of undue influence to the respondents in this case, and in view of the . . . pseudoworld that was created—we call it lying and denying. We call it setting up Dad. He went for it hook, line and sinker, and he was vulnerable. And the model that [an expert witness] gives you as somebody being so vulnerable, whether they used reciprocation, where they came under the cloak of being there to help, all of that, basically shifts the burden over to them saying, oh, no, no, no. Here is our evidence that despite all of these lies that he used on making decisions about the will, that were never changed, that he was never given the information, the correct financial information so his financial decision in his 2006 will and his 2007 will could be accurate to relate to the real world, they have the burden to show what he would have done at that point in time if he had known that they were liars and deniers and they had not actually gotten a valid marriage."

Moreover, after the probate court issued a tentative decision that the 2007 will was the product of undue influence but that the 2006 will was not, John's children requested a statement of decision. In neither their original nor their amended request for a statement of decision did they protest that issues concerning the 2006 will exceeded the scope of the probate petition and notice. Instead, the children continued to attack both wills. They argued that Angela and Ethel had "a plan to get everything," and they "close[d] the deal" with John's 2006 will. Then, "Angela escape[d] with the hand drawn 2006 Will to secret[] it in her safety deposit box away from the frail and sickly John Callahan so he won't be able to reconsider the pressures of the moment they caused him to handwrite a Will instead of typing it as he had done [with] his previous Will in May 1970." John's children urged the court to "look at the extended horizon in this situation" (emphasis omitted) and to address in the statement of decision "not what was in the mind of John Callahan in December 2006 but what would have been in his mind" at that time if he had known the truth about Angela and Ethel. The children requested that in the statement of decision the court decide, inter alia, the controverted issue of "What was John Callahan's

physical and mental condition at the time and on the date of the holographic will with the date of December 2006."

Any defects in notice were readily discoverable by John's children and could have been raised before the probate court. Because they made no objection in the probate court to any improper notice, participated in the trial, and encouraged the court to adjudicate issues pertaining to the 2006 will, John's children have forfeited the right to now complain that notice was defective and that the court acted in excess of its jurisdiction by ruling on the 2006 will. (See *Estate of Nicholas* (1986) 177 Cal.App.3d 1071, 1081; *Harnedy v. Whitty* (2003) 110 Cal.App.4th 1333, 1345; *Lovett v. Carrasco* (1998) 63 Cal.App.4th 48, 54-55; *Robbins v. Regents of the University of California* (2005) 127 Cal.App.4th 653, 659-660.) "To hold otherwise would impermissibly permit a party to gamble without risk by allowing proceedings to continue to conclusion without objection, claiming reversible error only if the conclusion were unfavorable." (*Trail v. Cornwell* (1984) 161 Cal.App.3d 477, 484.)

B. Development of the Law Regarding Donative Transfers to Care Custodians

John's children include a section in their brief devoted to the evolution of the law concerning testamentary bequests to care custodians. They describe former Probate Code section 21350 and two cases considering that statute, *Bernard v. Foley* (2006) 39 Cal.4th 794, and *Estate of Pryor* (2009) 177 Cal.App.4th 1466; then they discuss amendments to the law concerning donative transfers in 2010, specifically the addition of Probate Code section 21362. John's children state that the question for this court "to decide is whether this change in law reflects a decision by the Legislature to meet the invitation of Chief Justice George [in his concurring opinion in *Bernard*, *supra*, 39 Cal.4th 794] in distinguishing the category of persons to whom the presumption of undue influence in their dealings with an elderly dependent adult is attached from those whose access to the dependent adult preexisted the onset of a care custodian." They assert that the change in the law indicates a legislative intent to "add[] care custodians to a list of presumptively disqualified individuals in taking from the estate of a dependent adult."

This request for statutory interpretation fails to present any claim of error for this court to resolve. An appellant must offer argument as to how the trial court erred, rather than citing general principles of law without applying them to the circumstances before the court. (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699.) The Court of Appeal "will not issue an advisory opinion on an abstract question of law." (*Roe v. Superior Court* (2015) 243 Cal.App.4th 138, 147.)[2]

C. The Callahan Marriage

John's children contend that Angela and John's marriage was void because Angela's judgment of divorce from her previous marriage was void, and assert that "the proof of the entire Los Angeles Superior Court file" of Angela's dissolution action demonstrates that the court's jurisdiction and judgment were based on a false declaration of service. They then set forth information about the Callahans' 2000 marriage, discuss the testimony about Angela's divorce, and allege that Angela presented perjured documents to the probate court. None of the factual assertions in this argument is supported by a reference to the lengthy record on appeal. Any reference in an appellate brief to matter in the record must be supported by a citation to the volume and page number of the record where that matter may be found. (Cal. Rules of Court, rule 8.204(a)(1)(C).) "[A]n appellate court cannot be expected to search through a voluminous record to discover evidence on a point raised by appellant when his brief makes no reference to the pages where the evidence on the point can be found in the record." (*Metzenbaum v. Metzenbaum* (1950) 96 Cal.App.2d 197, 199.) When a party fails to support an argument with the necessary citations to the record, the argument is deemed to have been waived. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.)

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[2] Although John's children present this argument concerning the evolution of donative transfer laws as a distinct theoretical issue, elsewhere in their briefing they argue that they should have been permitted to amend their will contest to allege the invalidity of the Callahan marriage so that they could argue that the bequests to Angela and Ethel were presumptively invalid donative transfers to care custodians. For reasons we discuss later in this opinion, the probate court properly refused to permit the requested amendment.

D. Putative Spouse Status

John's children argue that Angela was not entitled to be considered a putative spouse. The probate court's ruling, however, did not rest primarily on a determination that Angela was a putative spouse, but on her status as John's wife. The issue of whether Angela could be considered a putative spouse arose in the context of John's children's request to amend their will contest to assert that Angela's divorce judgment was void because it was based on a false declaration of service. The court explained that amending the will contest to allege that the marriage was void would not benefit John's children, because the court had jurisdiction over Angela's divorce based on the fact of service, and the only evidence in the record was that service had been accomplished. The court then concluded that "even if service [in Angela's divorce action] was not properly effectuated," Angela nonetheless would be John's putative spouse and entitled to the same benefits as a legal spouse.

As John's children have not established any error in the court's determination that John and Angela were married, even if we accept for the sake of argument the claim that the court erred in its alternative putative spouse analysis, such an error is immaterial and cannot have resulted in an injury or miscarriage of justice. "'It is a fundamental principle of appellate jurisprudence in this state that a judgment will not be reversed unless it can be shown that a trial court error in the case affected the result.' [Citation.] '"The burden is on the appellant, not alone to show error, but to show injury from the error."' [Citation.]" (*In re Marriage of Falcone & Fyke* (164 Cal.App.4th 814, 822.)

E. Refusal of Leave to Amend Will Contest

John's children argue that the probate court erred when it refused to allow them to amend their will contest near the end of the trial to allege that the Callahan marriage was void. The probate court denied leave to amend because the void marriage argument "was not only a new legal theory but was factually inconsistent with the allegations of their Contest and Grounds of Opposition to Probate of Will," in which the children had pleaded that Angela and John were married. The court also found that John's children

had unreasonably delayed in requesting the amendment, and that permitting amendment at a late stage in the proceedings would substantially and unfairly prejudice Angela and Ethel. Finally, the probate court found that the requested amendment would have been unavailing, because even if the marriage were void Angela would have been considered John's putative spouse.

John's children argue that Angela and Ethel were caregivers to John and that they were therefore barred from receiving donative transfers from him. They state that Angela and Ethel had emphasized that this was a new issue at the close of trial and identify this "defense" as "ironic" given that John's children had assumed the divorce judgment was legally obtained. They then observe that they wished to amend the will contest not to set aside the marriage, but to collaterally attack it for the purpose of demonstrating that donative transfers to Angela and Ethel were presumptively void under former Probate Code section 21350.

In this argument John's children do not discuss the fact that their amendment set forth a theory that directly contradicted the factual allegations in their original pleading, other than labeling the issue of a new theory "a red herring" because they were not seeking to set aside the marriage. Nor do they acknowledge or address the court's determinations that they had unreasonably delayed in seeking amendment and that granting the motion to amend would substantially and unfairly prejudice Angela and Ethel. Accordingly, they have failed to establish any error in the court's ruling. "'The burden of affirmatively demonstrating error is on the appellant. This is a general principle of appellate practice as well as an ingredient of the constitutional doctrine of reversible error.' [Citation.] The order of the lower court is '"presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness."' [Citation.]" (*Pietak, supra*, 90 Cal.App.4th at p. 610.) It follows from this principle that when the trial court relies on a stated rationale for a ruling, the party challenging that ruling must make some effort to address that rationale on appeal. Otherwise the party has failed to rebut the presumption of correctness and a reviewing court may treat the point as inadequately presented, passing it without further discussion. """An appellate court

cannot assume the task of discovering the error in a ruling and it is the duty of counsel by argument and the citation of authority to show the reasons why the rulings complained of are erroneous. Contentions supported neither by argument nor by citation of authority are deemed to be without foundation and to have been abandoned." [Citations.]' [Citation.]" (*In re Phoenix H.* (2009) 47 Cal.4th 835, 845.) John's children have failed to demonstrate that the probate court erred when it denied leave to amend the will contest.

DISPOSITION

The judgment is affirmed. Petitioners shall recover their costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.